

Dear Ocean Conservation Research community and friends,

In an unprecedented ruling yesterday afternoon, Judge Florence-Marie Cooper constrained the Navy from deploying mid-frequency sonar in state waters. While at first brush this case may appear to be about establishing a balance between national security and the environment, in truth it is about putting a limit on how unlawful our navy can be in the execution of their mission.

This specific case has been in the works since December 2006, when the Navy received a "consistency determination" from the California Coastal Commission (CCC) about the use of sonar in training exercises off of California. A number of us, including Joel Reynolds (NRDC), Mark Palmer (Earth Island) presented our concerns about the determination at the CCC meeting in December 2006 and again in January 2007. At the end of this stage the Navy was asked to implement mitigations while in California EEZ waters. The Navy's first volley along this trajectory was to exempt themselves from the Endangered Species Act. The court case brought on by NRDC and joined by the CCC ensued.

In her ruling, Judge Cooper did not constrain the Navy from doing their exercises (they are not constrained from operating in areas more than 12 miles from California land) she just asked them to not be reckless in California EEZ waters. The Navy claims that national security and fleet preparedness are being compromised for environmental concerns. I suggest that a reasonable balance was struck between the will of the Navy and the environmental laws protecting our state waters. The ruling affirms that the United States is above all, a nation of laws.

Thanks to Joel Reynolds with NRDC, Peter Douglas and Sara Wan with the Coastal Commission, all who showed up at the CCC meetings, and all of you wrote letters of support and concern about this issue.

Regards,

Michael Stocker
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Navy must cut sonar use off California

<http://www.latimes.com/news/print/edition/front/la-me-sonar4jan04,1,5472074.story?coll=la-headlines-frontpage>

Judge orders tough restrictions to protect whales and dolphins. Officials fear training will be hampered.

By Kenneth R. Weiss, Los Angeles Times Staff Writer
January 4, 2008

A federal judge in Los Angeles on Thursday ordered the toughest set of restrictions ever imposed on the U.S. Navy's use of mid-frequency sonar off the Southern California coast as part of a protracted court battle to protect whales and other marine mammals from underwater sonic blasts.

The order was the first time the judge has spelled out specific rules the Navy must follow to avoid a court-imposed ban on training missions with a type of sonar that has been linked to the death and panicked behavior of whales and dolphins.

U.S. District Judge Florence-Marie Cooper ordered the Navy to refrain from using the powerful submarine-hunting sonar within 12 miles of the coast, a corridor heavily used by migrating gray whales, dolphins and other marine mammals.

She also ordered that the Navy spend an hour before it starts any training mission searching for marine mammals in the area and that it continue using shipboard observers and aircraft to monitor for whales and dolphins while the sonar is in use.

If any marine mammals are spotted within 2,200 yards of a ship using sonar, the Navy will have to cease its use

immediately.

In her 18-page order, Cooper said the Navy's proposed strategy of slowly reducing sonar power and then shutting it off when whales or dolphins come within 200 yards "is grossly inadequate to protect marine mammals from debilitation levels of sonar exposure."

The judge, who has spent years poring over studies about whale deaths and injuries after Navy exercises, has suggested in her rulings that she wants to balance competing interests of national security and fleet readiness with environmental protections.

She noted that the Navy's own study concluded that upcoming exercises off Southern California "will cause widespread harm to nearly 30 species of marine mammals, including five species of endangered whales and may cause permanent injury and death."

Because scientists have chronicled panicked responses from marine mammals as far as 40 kilometers away, Cooper said the 2,200-yard shutdown requirement "represents a minimal imposition of the Navy's training exercises" while preventing the harshest sonar-related consequences.

Cmdr. Jeff Davis, a Navy spokesman, said the Navy is considering its options.

"Despite the care the court took in crafting its order, we do not believe it struck the right balance between national security and environmental concerns," Davis said.

Davis said the Navy is mostly concerned about having to shut down sonar completely in a safety buffer zone that is far larger than it planned. Defense lawyers argued that the scientific evidence doesn't clearly show such safeguards are necessary.

The Navy has also asserted that some restrictions may hamper its ability to adequately train its sailors in antisubmarine warfare and may put sailors and national security at risk of attack by the quiet diesel-electric submarines operated by some potentially hostile nations in various hot spots around the globe.

Meanwhile, environmental groups and a state official considered the order a victory.

"It's a complete vindication" of the California Coastal Commission's actions, said Peter Douglas, the commission's executive director. "We know there are things that the Navy can do to protect marine mammals while they conduct their exercises, but the Navy refused. The court said, 'No, you have to comply.' "

The Coastal Commission, which has the legal authority to comment on federal activities off the California coast, joined a lawsuit brought by the Natural Resources Defense Council and other environmental groups that have tried to force the Navy to take greater precautions.

"We've said from the beginning that we don't want to stop the Navy from training but substantially increase protections against unnecessary harm to whales and other marine mammals," said Joel Reynolds, a senior attorney with the Natural Resources Defense Council. "This order does that."

In addition to the 12-mile buffer along the coast, the judge forbade the use of mid-frequency active sonar in the Catalina Basin, an underwater canyon between Santa Catalina Island and the Navy-owned San Clemente Island, because it's an area known to have a high density of whales.

But the judge refused to bar the Navy from conducting exercises off the Tanner and Cortez banks, and the Westfall seamount -- undersea mountains that tend to attract whales. Nor would she set any restrictions on operations at night or in the fog or other times of low visibility, when spotting marine mammals may prove difficult.

Instead, she opted for a more rigorous effort to keep watch for whales, including using passive acoustic monitoring to listen for whale clicks, chirps and songs -- especially for those of deep-diving beaked whales, which appear to be particularly sensitive to sonar activities. These mysterious whales have washed ashore injured or dead after naval exercises using mid-frequency sonar in the Bahamas in 2000 and the Canary Islands in 2003.

In August, Cooper issued a temporary injunction banning all training exercises off Southern California waters until she could sort out the merits of the lawsuit. The Navy took the case to the U.S. 9th Circuit Court of Appeals, which instructed Cooper to narrow her injunction to specific safeguards the Navy could adopt to continue its training missions while the legal issues are thrashed out in court.

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http://seattlepi.nwsource.com/local/346011_orcasonar04.html

Judge put limits on Navy sonar use

By [ROBERT McCLURE](#)
P-I REPORTER

A federal judge forbade the Navy on Thursday from using a powerful form of sonar within 12 miles of the California coast and slapped other restrictions on naval war exercises in a ruling that could have repercussions in the Pacific Northwest.

U.S. District Judge Florence Marie-Cooper said noise from the Navy's midfrequency sonar far outstrips levels at which federal rules require ear protection for humans on the job. Whales' hearing is extremely sensitive.

"The court is persuaded that the (protection) scheme proposed by the Navy is grossly inadequate to protect marine mammals from debilitating levels of sonar exposure," Marie-Cooper wrote in her ruling.

The Navy offered to reduce the sonar's intensity when whales approached within about 1,100 yards and power down further before shutting the sonar off when the creatures got within 200 yards. The judge ordered sonar shut off when marine mammals are within 2,200 yards.

By the Navy's own estimate, it would harass or harm marine mammals, as prohibited by the Endangered Species Act, about 170,000 times, the judge said. The Navy said the series of 14 exercises would temporarily deafen whales 8,000 times and cause permanent injuries in more than 400 cases.

Environmental groups, led by the Natural Resources Defense Council, brought suit as part of a campaign to rein in sonar use, which they contend violates several federal laws. They had sought a ban on naval exercises out to 25 miles from shore.

The Navy argued that it must train sailors against a new generation of quiet submarines that can't be detected by traditional "passive" sonar, but are picked up by the midfrequency version.

The service said exercises off Southern California are important because they give sailors training around undersea mountain ranges like those where they might chase subs elsewhere in the world.

"Despite the care the court took in crafting its order, we do not believe it struck the right balance between national security and environmental concerns," said Jeff Davis, a Navy spokesman at the Pentagon.

The judge also required the Navy to watch for marine mammals for an hour before using the sonar, among other conditions.

The restrictions could affect the debate in the Northwest over protecting Puget Sound orcas and other marine mammals.

However, different species are at risk off Southern California. There, beaked whales sometimes disappear underwater for up to an hour. Orcas are usually easier to spot.

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<http://www.washingtonpost.com/wp-dyn/content/article/2008/01/03/AR2008010303887.html>

Navy's Use of Sonar Is Severely Limited Rules Aim to Protect Marine Mammals

Internal Virus Database is out-of-date.

Checked by AVG Free Edition.

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